

RESPONSE TO COMMENTS

Date: October 22, 2007

REGARDING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA) PROPOSAL TO TERMINATE UNDERGROUND INJECTION CONTROL (UIC) PERMITS #MI-163-1W-C007 AND #MI-163-1W-C008 ISSUED TO ENVIRONMENTAL DISPOSAL SYSTEMS, INC., FOR WASTE INJECTION WELLS #1-12 AND #2-12 IN WAYNE COUNTY, MICHIGAN FOR THE PURPOSE OF COMMERCIAL DISPOSAL OF LIQUID HAZARDOUS WASTES.

Introduction

The United States Environmental Protection Agency (U.S. EPA) is providing this response in accordance with Section 124.17 of Title 40 of the Code of Federal Regulations (40 C.F.R. • 124.17), which requires U.S. EPA to issue a response to comments when it issues a final permit decision. That response must: (1) describe and respond to all significant comments raised during the public comment period; and (2) specify which provisions, if any, of the draft decision have been changed and the reasons for the change. In addition, U.S. EPA must include in the administrative record any documents cited in the response to comments, and make the response to comments available to the public.

Background

The public comment period for this permitting decision began on April 23, 2007 and ended on June 22, 2007. Under 40 C.F.R. • 124.10, the minimum public comment period is 30 days. Public notices were published in the Romulus Roman, The News-Herald, and in the Detroit Free Press and mailed to other interested parties who had contacted the U.S. EPA, Region 5, UIC Branch. The public notices also stated the date for the public hearing on the proposed decisions. The public hearing was scheduled for and held on May 23, 2007, at the Crowne Plaza Hotel in Romulus, Michigan. About 100 members of the public attended. Upon closure of the public comment period, U.S. EPA reviewed the issues raised by the public, gathered information to clarify those issues and developed this response to comments document.

Determination

U.S. EPA has determined that the public comments submitted did not raise significant issues which would alter U.S. EPA's basis for determining that it is appropriate to terminate the permits issued to Environmental Disposal Systems, Inc. (EDS) to operate two hazardous waste injection wells. Therefore, the permits are terminated on the date shown at the top of this document.

Comments and Responses

A. Comments from the public and elected officials

Comment 1 – Several commentators stated for the record that they support U.S. EPA's decision to terminate the permits without any further elaboration.

Response – The commentors did not provide any additional information in support of the termination, therefore it is assumed that they agree with the U.S. EPA’s facts supporting the termination as described in the Fact Sheet provided to all interested parties during the public comment period.

Comment 2 – Several commentors requested that the land ban exemption granted to EDS also be terminated.

Response – The land ban exemption was a separate process under different regulations and standards and is not a subject of this U.S. EPA action. The exemption may be considered at a later time in the context of the future actions at the Romulus facility.

Comment 3 – A commentor requested that the facility be shut down permanently and the wells plugged.

Response – U.S. EPA has a regulatory obligation to review any new permit applications and issue permits if the requirements are met. If no new applications are received, closing the facility and plugging the wells is a viable option.

Comment 4 – Several commentors commented on the enforcement action against EDS, stating that the penalty is too lenient, the new operator should pay all fines, and that the violations have not been addressed.

Response – The enforcement action against EDS is a separate matter. It has proceeded separately from the permit termination action. In March 2007, U.S. EPA issued a press release and posted a public notice on its web site informing the public of the administrative complaint filed against EDS. The public had ample opportunity to make comments on the complaint .

At this time U.S. EPA is only responding to comments on the proposed termination of EDS’s UIC permits.

Comment 5 – Several commentors stated that EDS had no qualifications to run a deep injection well.

Response – This comment is not directly related to the permit termination proceedings. Issues of operator qualifications were addressed during the permitting process.

Comment 6 – The permits were based on known hazards; there was no guarantee that the wells will be safe.

Response – This comment is not directly related to the permit termination proceedings. Well safety issues were considered and addressed during the initial permitting process. To the extent EDS’s abandonment of the facility may create questions or concerns about the viability of the wells, those questions would be fully addressed in any future permitting proceeding.

Comment 7 – The same people who ran EDS would run Environmental Geo-Technologies, LLC (EGT), which is seeking to obtain a transfer of the permits.

Response – EGT is not the subject of the EDS permit termination process. EGT’s qualifications would be evaluated if it seeks new permits for the facility.

B. Comments by the Police and Fire Retirement System of the City of Detroit (PFRS) and RDD Investment Corporation and RDD Operations, LLC (collectively RDD)

The PFRS and RDD oppose U.S. EPA’s notice of intent to terminate. They request that U.S. EPA instead approve transfer of the permits to EGT, either by modifying the permits to name EGT as the new owner/operator or by revoking and reissuing the permits to EGT for the following reasons:

Comment 8 – The basis for the proposed termination was that EDS had not complied with reporting and recordkeeping obligations and with requests for information issued by U.S. EPA. This ignores the fact that EDS assigned its rights to RDD and that RDD has responded to all of the inquiries, information requests, and permit requirements, and has resolved the operating violations.

Response – Although many of the violations that were the basis for the proposed termination have since been resolved, that does not remove the regulatory basis for the termination. 40 C.F.R. § 144.40 gives U.S. EPA broad discretion to terminate a permit for “[n]oncompliance by the permittee with any condition of the permit.” EDS’s noncompliance is well documented. Later efforts at damage control do not eliminate concerns that those violations, and EDS’s abandonment of the facility create serious doubts about the viability of the facility.

Terminating the permits ensures that the merits of the facility will be fully re-evaluated through a new permitting proceeding before the facility could reopen. This is consistent with the general guiding principle of the UIC program – that underground injection of hazardous wastes is prohibited until it can be shown that the injection will not endanger drinking water sources or public health. See 40 C.F.R. § 144.1(d).

U.S. EPA acknowledges that RDD provided certain responses and records requested of EDS. RDD’s comments also concede that it wasn’t able to provide some information that U.S. EPA

requested to address its concerns (see RDD comments paragraphs 54 and 68). RDD was also on notice that the information requested from EDS on January 12, 2007, was to determine whether cause existed to terminate the permits held by EDS.

Although it is not the permittee, as the current owner of the facility, RDD must comply with various laws and regulations concerning facility operation, see for example 40 C.F.R. § 144, Subparts B, D and F; 40 C.F.R. § 146, Subpart G.

Comment 9 – Termination of the permits would punish the PFRS and the police and fire retirees for whose benefit PFRS invested in the facility. These parties stepped in under difficult circumstances to address the problems at the facility, even though they could have left it to U.S. EPA. Termination doesn't punish EDS for its misdeeds – none of its former officers, directors, or shareholders have had any role since November, 2006 – it would instead require RDD and EGT to pursue a costly and time-consuming new permit application.

Response – The termination responds to significant violations by, and operational problems of, the permittee EDS. EDS is the entity directly accountable to U.S. EPA, and EDS's utter disregard of its permit obligations must trigger regulatory consequences. The fact that EDS is no longer present at the facility does not alter U.S. EPA's responsibility to determine whether the existing permit should survive in light of EDS's actions.

After obtaining permits and authorization to inject, EDS operated the facility for less than 10 months before encountering major financial and operational problems. At that point, on November 7, 2006, EDS abandoned all interest in the facility and in its permit obligations. EDS purported to transfer its interest in the permits to RDD without following any of the permit transfer requirements in 40 C.F.R. § 144.38. U.S. EPA was not formally informed of these developments until it received correspondence from RDD on November 28, 2006, partially responding to information requests directed to EDS.

The potential for adverse regulatory actions, including termination, is a risk that EDS's investors knowingly took when they invested in a highly regulated business. The regulations are clear that "issuance of a permit does not convey any property rights of any sort, or any exclusive privilege." 40 C.F.R. § 144.35(b). U.S. EPA also notes that materials RDD and EGT have prepared in pursuing a transfer of the permits may be also be useful if they choose to pursue a new permit.

U.S. EPA acknowledges that, while it is not the permittee, RDD has taken steps to address operational issues at the facility. U.S. EPA also notes that although it is not the permittee, as the owner of the facility RDD is required to do so under applicable laws and regulations. See for example 40 C.F.R. § 144, Subparts B, D and F; 40 C.F.R. § 146, Subpart G.

Comment 10 – U.S. EPA's decision to put EGT's permit transfer request on hold is not supported by law. RDD and EGT have met the outstanding permit conditions, the violations had

no impact on and there is no question concerning the integrity of the wells, and EGT is a technically and financially qualified operator.

Response – U.S. EPA’s decision to put EGT’s permit transfer request on hold while it considered whether to terminate those permits is an appropriate exercise of U.S. EPA’s discretion. U.S. EPA decided to approach the proceedings in this logical order because: (1) there would be no need to further consider the permit transfer request if the underlying permits were terminated; and (2) the permit termination proceeding would give EGT and RDD full opportunity to present arguments opposing permit termination and supporting permit transfer. As this response to comments shows, those arguments were given full and serious consideration.

Comment 11 – The PFRS and RDD have incurred significant costs in addressing the compliance issues at the facility and in pursuing permit transfer since November 2006. Throughout this process, U.S. EPA never indicated that the UIC permits might be terminated until the April 12, 2007, notice of intent to terminate.

Response – U.S. EPA staff did not, and could not, make any commitments to RDD that the permits would be transferred. RDD was, however, on notice that the information requested from EDS on January 12, 2007, was to determine whether cause existed to terminate the permits held by EDS.

U.S. EPA worked with RDD on compliance issues and on permit transfer issues so that the permit transfer process could proceed if U.S. EPA decided not to propose permit termination or if it decided not to terminate the permits after considering public comments. U.S. EPA also worked with RDD on compliance issues because as the current owner of the facility, RDD had an obligation to comply with various laws and regulations concerning facility operation, see for example 40 C.F.R. § 144, Subparts B, D and F; 40 C.F.R. § 146, Subpart G.

Comment 12 – Termination of the permits is too drastic. There are other remedies available to the Administrator that are fully supported by the record. Pursuing these alternatives will insure safe and lawful operation of the facility.

Response – U.S. EPA carefully considered other options before proposing to terminate EDS’s UIC permits. U.S. EPA also carefully considered the public comments it received before deciding that termination of the permits is the most appropriate course of action.

The regulations are clear that U.S. EPA may exercise its discretion to terminate a permit for “[n]oncompliance by the permittee with any condition of the permit.” 40 C.F.R. § 144.40(a)(1). The fact sheet and the record establish numerous instances of non-compliance with the permit. Most troublingly, as outlined in RDD’s comments, those violations were the result of: (1) the permittee running into significant financial and operational problems at the facility within less

than 10 months of operation which led to cutting corners and ignoring regulatory requirements; and (2) the permittee deciding to abandon all interest in the facility and in its permit obligations without any notice to U.S. EPA. This level of disregard for its regulatory obligations warrants severe sanctions against the permittee. In light of these circumstances, U.S. EPA concludes that particularly careful and extensive scrutiny should accompany any decision to reopen the facility under a new owner/operator. Such scrutiny appropriately can be given to any new applications to acquire permits to reopen the facility in the future.

C. Comments by Environmental Geo-Technologies (EGT)

Comment 13 – U.S. EPA’s proposed termination of the permits is the most severe option available to the Administrator and less onerous options are available and appropriate. The integrity of the wells is not at issue, and nearly all of the violations cited as a basis for termination have been cured. U.S. EPA has not terminated a permit at other facilities because of violations.

Response – See response to comment 12 above. The level of irresponsible behavior exhibited by the permittee distinguishes this matter from other cases where U.S. EPA has addressed regulatory violations through penalty actions rather than through permit termination. In those other cases where permit violations did not lead to termination, the permittees remained in place -- accountable and responsive to regulatory compliance issues and continuing to operate under the permit. This is a uniquely troubling case because the permittee abandoned all interest in the facility without informing U.S. EPA and with no intention of remaining in place to address compliance issues.

Comment 14 – Although EDS abandoned all of its interest in the facility, RDD has been responsive to U.S. EPA’s requests and sought transfer of the permits. U.S. EPA has treated RDD as a de facto operator and has encouraged its efforts.

Response – U.S. EPA worked with RDD on compliance issues because as the current owner of the facility, RDD had an obligation to comply with various laws and regulations concerning facility operation. See, for example, 40 C.F.R. § 144, Subparts B, D and F; 40 C.F.R. § 146, Subpart G.

U.S. EPA staff did not, and could not, make any commitments to RDD that the permits would be transferred.

Comment 15 – The valid pending permit transfer request should be acted on first. Working in good faith with U.S. EPA, RDD has addressed operational concerns at the facility and EGT has shown it is a qualified, well-funded entity. EGT’s presence will alleviate concerns about future

compliance.

Response – U.S. EPA’s decision to put EGT’s permit transfer request temporarily on hold while it was considering whether to terminate those permits is an appropriate exercise of U.S. EPA’s discretion. U.S. EPA decided to approach the proceedings in this logical order because: (1) there would be no need to further consider the permit transfer request if the underlying permits were terminated; and (2) the permit termination proceeding would give EGT and RDD full opportunity to present arguments concerning why the permits should not be terminated, but should be transferred instead. As this response to comments shows, those arguments were given full and serious consideration.

Comment 16 – U.S. EPA’s April 12, 2007 notice to EGT that it was deferring consideration of the permit transfer request was inadequate and arguably a denial of due process because EGT did not receive a reasoned explanation or have a right to be heard before the decision.

Response – See response to comment 15 above. U.S. EPA’s April 12, 2007, letter did not decide the merits of the permit transfer request and did not deny the permit transfer request. The U.S. EPA’s letter described its rationale for allocating its resources and its review priorities.

Comment 17 – EGT and RDD’s property rights in the permits have been denied.

Response – The regulations are clear that “issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.” 40 C.F.R. § 144.35(b).

Comment 18 – U.S. EPA should not have denied the permit transfer request because EGT met the requirements for transfer.

Response – U.S. EPA’s April 12, 2007, letter did not decide the merits of the permit transfer request and did not deny the permit transfer request. It should also be noted that U.S. EPA has not reviewed EGT’s submittals for completeness. It is not clear that EGT meets all requirements for permit transfer.

Comment 19 – U.S. EPA’s record does not include the substantial documentation reflecting the status of both the permit transfer request and RDD’s remedial activities to cure alleged violations.

Response – EGT’s and RDD’s submittals included this information, which is therefore part of the record under 40 C.F.R. § 124.18. As explained in detail in the response to comment 8 above, this information does not negate the basis for termination of the permits. Termination of the permits is based on the improper operation of the facility by EDS.

Comment 20 – The U.S. EPA actions will effectively close the facility, which is too severe a result.

Response – EGT or any other party can submit a new application for a permit to operate the wells at any time under 40 C.F.R. § 144.31. As RDD's comments note, termination of the permits requires RDD and EGT to submit a new permit application. It does not predetermine that the facility must close. U.S. EPA also notes that materials RDD and EGT have prepared in pursuing a transfer of the permits may be also be useful if they choose to pursue a new permit.

Comment 21 – RDD, EDS and EGT have fully complied and are ready, willing and able to move forward with the Permit Transfer and compliant operations.

Response – See response to comments 15 and 18, above.

Comment 22 – The U.S. EPA failed to consider EGT's and RDD's extensive submittals and environmentally responsible remediation resulting in errors of fact and law.

Response – See response to comment 19 above.

Comment 23 – The U.S. EPA failed to consider EGT's financial and technical ability to assume the permits and operate the facility.

Response – U.S. EPA did not make any decision on EGT's permit transfer request. It placed that request temporarily on hold while it was considering whether to terminate the permits.

Comment 24 – U.S. EPA failed to consider the facility's actual compliance status.

Response – See response to comment 8 above.

Comment 25 – U.S. EPA's actions could result in detriment to the environment if the facility is abandoned.

Response – If the permits are terminated and no new applicant comes forward, U.S. EPA is prepared to proceed with plugging and abandonment of the wells. When properly plugged, the wells will pose no environmental harm.

Comment 26 – U.S. EPA’s punishment of RDD’s good faith action will deter future “white knights” from taking action.

Response – Termination of the permits does not prevent RDD or EGT from reopening the facility under a new permit. By taking ownership of the facility without first following the permit transfer regulations, RDD assumed regulatory obligations to address operational violations regardless of its efforts to find a new owner/operator, see for example 40 C.F.R. § 144, Subparts B, D and F; 40 C.F.R. § 146, Subpart G. U.S. EPA’s regulations encourage potential owners and operators to coordinate with U.S. EPA in advance, rather than working after the fact to try to address the problems (see 40 C.F.R. § 144.38).

Comment 27 – U.S. EPA’s actions could delay resumption of operations at the facility.

Response – EGT or any other party can submit a new application at any time for a permit to resume operations at the facility. U.S. EPA also notes that materials RDD and EGT have prepared in pursuing a transfer of the permits may be also be useful if they choose to pursue a new permit.

In light of EDS’s total abandonment of its responsibilities under the permit, it is appropriate that the merits of the facility and its ownership be fully re-evaluated through a new permitting proceeding before it could reopen. This is consistent with the general guiding principle of the UIC program – that underground injection is prohibited until it can be shown that the injection will not endanger drinking water sources or public health. See 40 C.F.R. §§ 144.1(d), 144.11. Terminating the EDS permits for EDS’s irresponsible and unprecedented behavior demonstrates U.S. EPA’s seriousness of purpose in upholding that principle.

Comment 28 – U.S. EPA’s proposed action could erode confidence in agency decision making.

Response – This decision reflects U.S. EPA’s continued vigilance in assuring that companies that obtain a permit to inject hazardous substances operate responsibly and appropriately. Over 90% of commentors supported U.S. EPA’s proposed termination of EDS permits.

Comment 29 – Innocent parties who invested in the facility may be harmed by U.S. EPA’s arbitrary and erroneous actions.

Response – See response to comment 9 above.

D. Request to Extend and/or Reopen the Public Comment Period

On September 11, 2007, RDD also requested that U.S. EPA extend and/or reopen the comment period on the proposed permit termination. RDD made this request “to give interested persons an opportunity to comment on the new information and arguments submitted during the public comment period....” Specifically, RDD stated that the notice of intent to terminate the EDS permits did not address RDD’s actions and legal interest in the facility. RDD therefore requested that the comment period be reopened “for the purpose of addressing the significance of RDD’s actions and equitable and legal interests related to the permits at issue....”

As noted throughout the response to comments above, RDD (and EGT) raised these issues at length in their public comments on the notice of intent to terminate the permits. RDD’s public comments included extensive documentation concerning those issues and extensive explanation of RDD’s view of their relevance and significance. That material is part of the administrative record for this decision. As shown at length in the response to comments above, those facts and issues were carefully considered.

RDD also states that U.S. EPA should consider extending the public comment period to allow other commentors to address the extensive information provided in RDD’s and EGT’s comments. U.S. EPA does not believe this is necessary to expedite or improve the decisionmaking process. These issues were also raised at the public hearing. A number of comments both at that hearing and in writing indicate awareness of both RDD’s ongoing role at the facility and its desire to transfer the permits rather than have them terminated. Those comments nonetheless support termination of the permits, both because of EDS’s past violations and because of overall skepticism about operation of the wells by any entity. It therefore appears unlikely that soliciting further comment on the information submitted by RDD and EGT would add to the quality or comprehensiveness of the record or the decisionmaking process.

Appeal

In accordance with 40 C.F.R. • 124.19, any person who filed comments on the draft permits or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the final permit decision. Such a petition shall include a statement of the reasons supporting review of the decision, including a demonstration that the issue(s) being raised for review were raised during the public comment period (including the public hearing) to the extent required by these regulations. The petition should, when appropriate, show that the permit condition(s) being appealed are based upon either, (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

If you wish to request an administrative review, you must submit such a request by regular mail to the United States Environmental Protection Agency, Clerk of the Board, Environmental Appeals Board (MC 1103B), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-0001. Requests sent by express mail or hand-delivered must be sent to the United States Environmental Protection Agency, Clerk of the Board, Environmental Appeals Board, Colorado Building 1341 G Street, NW, Suite 600, Washington, D.C. 20005.

The request must arrive at the Board's office on or before November 26, 2007. The request will be timely if received within this time period. For this request to be valid, it must conform to the requirements of 40 C.F.R. • 124.19. A copy of these requirements is attached (Attachment A). This request for review must be made prior to seeking judicial review of any permit decision.

Final Decision

The Response to Comments incorporating the final decision is available for viewing at:

Romulus Public Library, 11121 Wayne Road, Mon. - Thurs. 10 am - 8 pm, Sat. noon - 5 pm;

Taylor Community Library, 12303 Pardee Road, Mon. - Thurs. 10 am - 8 pm, Fri. - Sat. 10 am - 5 pm;

Eshleman Library, Henry Ford Community College, 5101 Evergreen Road, Dearborn, Mon. - Thurs. 7:30 am - 9:30 pm, Fri. 7:30 am - 4 pm, Sat. 9 am - 5 pm.